The proposed bill would force this premier agency to provide its FDA seal of approval on a deadly product that has no health benefit, Enzi added.

Opening Statement of

U.S. Senator Michael B. Enzi
Ranking Member

Senate Committee on
Health, Education, Labor, and Pensions

"The Need for FDA Regulation of Tobacco"

February 27, 2007

Good morning. I'd like to thank my colleague Senator Kennedy for calling this hearing. I believe it is always a good idea to discuss controversial issues like this one in order to better educate ourselves and the American people about the problem and the possible solutions.

We can all agree on what our common interest is -- stopping people of all ages from starting to smoke and convincing current smokers to quit that deadly habit. While the tobacco industry may seemingly share our views on teen smoking, I am one who doubts they have bought in to the idea of getting smokers to stop smoking. The bill that is now before the Senate proves this point.

Today, we should ask ourselves: What will it mean to have cigarette and tobacco products truly regulated by the Food and Drug Administration (FDA)?

The FDA is the gold standard among public health regulators the world over. For the past century, the FDA has protected the public -- from filthy conditions in meat packing plants to thalidomide, which caused thousands of birth defects in Western Europe. The FDA's constant vigilance is not just an historical artifact. Last week, there was a recall of peanut butter due to Salmonella contamination and baby food that had been tainted with botulism. This is how we have come to depend on the FDA every day to protect us and our children from poisons that could harm or even kill us.

Senator Kennedy and I have been working on FDA issues for the last two years. We held 10 hearings on FDA during the 109th Congress. Again and again, we focused on the FDA's role in protecting and promoting the public health. In all of our work together, it was evident that the FDA is overworked and underfunded. We, as a nation, currently ask the FDA to be responsible for so many things: ensuring that new drugs and medical devices are safe and effective; safeguarding the nation's food supply; regulating the manufacture and distribution of food additives and drugs that will be given to animals; and, increasing the security of our blood supply.

In each of these key activities, the role of the FDA is to protect our health. In providing that protection, the FDA examines key scientific facts and weighs the balance of benefit to our society and risk to our health. Yet, it baffles me why we are here today to talk about the FDA doing a risk/benefit analysis of tobacco and cigarettes. Everyone agrees that smoking kills. There is no such thing as a “safe” cigarette. Any public statement by the FDA under their current authority would necessitate the finding that there is no benefit to the use of cigarettes, only harm. The bill now before Congress would establish the FDA as the regulator for tobacco products. However, the bill explicitly states that the FDA will not be permitted to prohibit the sale of any tobacco product to adults 18 years or older. That is not true regulation. The bill would gut the authority that Congress has bestowed and staunchly defended for the FDA -- the authority to remove health threats from the marketplace.

Just having the FDA review and approve cigarettes sends mixed and confusing messages to the public – creating the sense that cigarettes are safe or made safer. I can see it now – tobacco companies being let off the hook in court because they can now say “But, Judge, our product was reviewed and approved by the FDA.” The FDA cannot be put in the position of approving a product that years of science and the personal experience of far too many Americans has shown to be dangerous. Simply put, it kills people.

So what can we do? I recognize that we can’t change behavior overnight. But the data on smoking are trending in the right direction. Fewer people smoke, and teenage smoking is down dramatically. We can always do more with educational and outreach efforts. Where are the funds going to come from?

I recognize that the money from the Master Settlement Agreement (MSA) with 46 states came with no strings attached. We all know the genesis of the agreement was States suing for the cost of health care for smokers and former smokers. The spirit of that agreement was that the funds would be used for health care for smokers and former smokers. However, that is not how the money is being spent.

As the GAO will highlight later today, on average, States are spending less than 5 percent of the MSA funds on tobacco control and prevention, and the spending on health care items, such as SCHIP, may not be focused on assisting smokers with severe health conditions due to their use of cigarettes. While States are spending their funds on a variety of projects, they are not spending key funds on the care of smokers and former smokers or preventing tobacco use in the first place.

In Fiscal Year 2007, only three states - Maine, Delaware and Colorado - are meeting the CDC minimum recommendation of 8 percent of spending on tobacco prevention. The combined total the states are spending on tobacco prevention amounts to just 2.8 percent of the $21.7 billion in tobacco-generated revenue the states will collect this year from the tobacco settlement and tobacco taxes. I think the States can do better.

The FDA approves cures, not poisons. Forcing the FDA to regulate tobacco but not letting them ban it would undermine the long history of the agency protecting and promoting the public health.

I ask my colleagues to think hard about what they are proposing. My record is clear when it comes to tobacco. I am no friend of big tobacco and I have never taken a dime of tobacco company money for my campaigns. I don't intend to start now. But I absolutely reject the notion that the way to show you're "for kids" and "against Big Tobacco" is by sending the Nation's premier public health watchdog out to fight for safety with one hand tied behind its back, by allowing this premier agency to provide its FDA seal of approval on a deadly product that has no health benefit.

I have a number of statements from outside groups regarding this legislation. I ask Unanimous Consent that they be entered into the hearing record.

I look forward to the testimony today.

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